Decision **DRAFT DECISION OF ALJS GOTTSTEIN AND TERKEURST**
(Mailed 6/9/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into Implementation of Assembly Bill 970 regarding the identification of electric transmission and distribution constraints, actions to resolve those constraints, and related matters affecting the reliability of electric supply.	Investigation 00-11-001 (Filed November 2, 2000)

INTERIM OPINION ON PROCEDURES TO IMPLEMENT PUBLIC UTILITIES CODE SECTION 399.25

1. Summary and Background[1]

This decision describes the process the Commission will use to implement Public Utilities Code Section 399.25, which was enacted on September 12, 2002, as part of Senate Bill (SB) 1078.[2] The main purpose of SB 1078 is to increase California's use of renewable energy resources, and § 399.25 specifically focuses upon electric transmission facilities necessary to achieve that purpose.

Among other things, SB 1078 created the Renewable Portfolio Standard (RPS) program in California, under which the state will increase its electrical

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[1] Attachment 1 explains each acronym or other abbreviation that appears in this decision.

[2] Stats 2002, Ch. 516, Sher. All code sections presented in today's decision refer to the Public Utilities Code.

generation from renewable sources by at least 1% per year, until renewables comprise 20% of total investor-owned utility (IOU) procurement. Article 16 of SB 1078, commencing with § 399.11, describes the RPS program envisioned by the Legislature. It includes the submission of renewable energy procurement plans by the IOUs, accompanied by "a bid solicitation setting forth the need for renewable generation of each deliverability, characteristic, required on-line dates and locational preferences," as applicable.[3]

SB 1078 also contains the following language, now codified as § 399.25:

> 399.25. (a) Notwithstanding any other provision in Sections 1001 to 1013, inclusive, an application of an electrical corporation for a certificate authorizing the construction of new transmission facilities shall be deemed to be necessary to the provision of electric service for purposes of any determination made under Section 1003 if the commission finds that the new facility is necessary to facilitate achievement of the renewable power goals established in Article 16 (commencing with Section 399.11).
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> (b) With respect to a transmission facility described in subdivision (a), the commission shall take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission are fully reflected in any retail rates established by the commission. These actions shall include, but are not limited to:
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> (1) Making findings, where supported by an evidentiary record, that those transmission facilities provide benefit to the transmission network and are necessary to facilitate the achievement of the renewables portfolio standard established in Article 16 (commencing with Section 399.11).

[3] § 399.14 (a)(3)(C).

(2) Directing the utility to which the generator will be interconnected, where the direction is not preempted by federal law, to seek the recovery through general transmission rates of the costs associated with the transmission facilities.

(3) Asserting the positions described in paragraphs (1) and (2) to the Federal Energy Regulatory Commission in appropriate proceedings.

(4) Allowing recovery in retail rates of any increase in transmission costs incurred by an electrical corporation resulting from the construction of the transmission facilities that are not approved for recovery in transmission rates by the Federal Energy Regulatory Commission after the commission determines that the costs were prudently incurred in accordance with subdivision (a) of Section 454.

By today's order, we adopt the following general framework for implementing the requirements of this statute:

- The provisions of § 399.25 apply to network transmission facilities that come before the Commission in the form of a Certificate of Public Convenience and Necessity (CPCN) or Permit to Construct (PTC) application. "Network" transmission facilities are defined as those that are needed to ensure reliable electric service and full delivery of a generator's output with the addition of generation. The provisions of § 399.25 do not apply to transmission facilities needed to bring power from the plant to the first point of interconnection with the existing transmission grid.

- The procurement proceeding will develop the rules and procedures for the RPS planning process and RPS renewables bidding program. If the transmission facility is an integral part of a renewables project approved pursuant to the RPS process, (i.e., a winning renewables bid), that creates a prima facie finding that the network upgrade will facilitate achievement of the renewable power goals set forth in Article 16 of SB 1078.

- The Commission will make § 399.25(a) and § 399.25(b)(1) findings on whether a proposed transmission project is "necessary" to facilitate achievement of renewable power goals in the applicable CPCN or PTC proceeding, based on the results of the RPS procurement process and General Order (GO) 131-D considerations of alternatives to the proposed project. The evaluation will not, however, reconsider the selection of the winning generation project.

- In the applicable CPCN or PTC proceeding, the Commission will make § 399.25(b)(1) findings regarding whether the transmission project undertaken to ensure reliable electric service with the addition of generation will also provide benefits to the transmission network.

- The Commission will continue to perform the appropriate review of CPCN and PTC applications under the California Environmental Quality Act (CEQA) , which may include consideration of project alternatives.

We believe that these general procedures will ensure a consistent understanding and application of § 399.25, and will serve to coordinate our activities in transmission planning and renewable procurement. However, as discussed below, nothing in today's decision precludes us from holding evidentiary hearings on § 399.25 issues (e.g., network benefits) for potential renewable transmission projects in advance of a RPS bid solicitation or filing of a CPCN or PTC if circumstances warrant. As a case in point, we have proceeded with evidentiary hearings on the Tehachapi Transmission Project in this proceeding.

Nor do these general procedures preclude us from delineating a set of system upgrades likely to be required in the next few years, or from taking affirmative steps to plan for them, based on the renewables transmission study we are preparing pursuant to SB 1038.[4] That study is due to the Legislature by December 1, 2003.

Today's adopted framework focuses on the results of the IOUs' procurement process. We will consider the applicability of § 399.25 to the procurement practices of other RPS-obligated retail sellers (electric service providers and community choice aggregators) in coming phases of RPS implementation as the rules for these sellers are developed.

2. Procedural History

On February 25, 2003, Administrative Law Judges (ALJs) Gottstein and Allen issued a ruling that contained a proposed framework for implementing § 399.25, and requested comments from interested parties (Joint Ruling).[5] The Joint Ruling set forth a general framework for incorporating the requirements of § 399.25 into the planning process, as follows:

- The procurement proceeding (R.01-10-024) will develop the rules and procedures for the RPS planning process and RPS renewables bidding program. If the transmission facility is an integral part of a renewables project approved pursuant to the RPS procurement process (i.e., a winning renewables bid), that creates a prima facie finding that the transmission project will facilitate achievement of the renewable power goals set forth in Article 16 of SB 1078.

[4] Among other things, SB 1038 (Stats 2002, ch. 515, Sher) directs that the Commission produce a transmission plan for renewable electricity generation facilities, to be informed by a resource assessment study conducted by the California Energy Commission (CEC). See § 383.5 (j).

[5] ALJs' Ruling Requesting Comments on Procedural Coordination of Renewables Procurement, Transmission Planning and Statutory Interpretation of Pub. Util. Code § 399.25, February 25, 2003.

- The Commission will make § 399.25(a) and § 399.25(b)(1) findings on whether a proposed transmission project is "necessary" to facilitate achievement of renewable power goals in the applicable CPCN or PTC proceeding, based on the results of the RPS procurement process and GO 131-D considerations of alternatives to the proposed project.

- In the applicable CPCN or PTC proceeding, the Commission will make § 399.25(b)(1) findings regarding whether the transmission facilities provide benefits to the transmission network.

- The Commission will continue to perform the appropriate CEQA review of CPCN and PTC applications, which may include consideration of project alternatives.

In presenting the above framework as the "general rule" for making § 399.25 findings, the ALJs acknowledged the following exception:[6]

> "We recognize that the Commission cannot make all of the findings required under § 399.25 with respect to transmission project need and ratemaking until the RPS rules and procedures for the renewables process have been developed and implemented. In the interim we are proceeding with the evidentiary hearings on one major renewables transmission project in the Transmission Investigation (I.00-11-001). As described in Judge Gottstein's January 29, 2003 ruling in that proceeding, there will be evidentiary hearings on the Tehachapi Transmission Project to address project network benefits, project costs, and other issues. We believe that it is prudent to move forward to develop an evidentiary record for this particular project before the RPS program is fully operational because (1) Southern California Edison Company is already proceeding with the biological studies to include in a CPCN

[6] *Ibid*. p. 7.

> application for this project, (2) the project costs, route and alternatives have been discussed over several months with industry participants, and (3) the project conceptual cost studies have been completed. Clearly, not all of the § 399.25 findings regarding this project can be considered by the Commission until the results of the RPS are known and the CPCN application is actually filed; but sufficient progress on some issues (e.g., network benefits) can be make over the next few months in the Transmission Investigation. [Footnote omitted.] As a general rule, however, we believe that the sequence and forum for making § 399.25 findings should follow the framework described above.[7]

The Joint Ruling was served on the service list in both the electric transmission investigation (I.00-11-001) and the generation procurement rulemaking (R.01-10-024). Comments were received from Southern California Edison Company (SCE), Pacific Gas & Electric Company (PG&E), the Independent Energy Producers Association (IEP), and the California Wind Energy Association (CalWEA). Reply Comments were received from SCE, PG&E, San Diego Gas & Electric Company (SDG&E), and The Utility Reform Network (TURN).

3. Positions of the Parties

In its comments, SCE states that the ALJs' proposed framework "correctly interprets and implements the legislative intent of section 399.25."[8] PG&E concurs with SCE in this regard. PG&E provides additional comments, some of which seek clarification of certain aspects of the framework, and others that

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[7] *Ibid.* pp. 6-7.

[8] SCE Comments, March 11, 2003, p. 2.

present PG&E's view of the larger context in which the framework must operate. In particular, PG&E argues that one aspect of the statute - the requirement that the Commission make findings that specific transmission facilities provide benefit to the transmission network – interferes with Federal Energy Regulatory Commission's (FERC) jurisdiction over transmission ratemaking, and is therefore preempted by federal law.

IEP expresses concern that the RPS bid-ranking process requires a calculation of the indirect costs associated with particular transmission projects, but those costs will not be known until completion of the later CPCN process. As a solution, IEP suggests that the Commission use a transmission cost proxy (for indirect transmission costs) in the RPS ranking process.

CalWEA is critical of the proposed framework, arguing that it will excessively delay development of transmission facilities and creates uncertainty by linking transmission planning and construction to the outcome of the RPS bidding process. In particular, CalWEA claims that, until the Commission makes "network benefit" findings, developers will not know if they are responsible for certain transmission upgrade costs.[9] CalWEA also faults the proposed framework for not considering the possible alternative methods of achieving RPS goals, i.e., through sales to unregulated service providers, rather than through the utility procurement process.

Upon completion of conceptual transmission studies, CalWEA recommends that the Commission promptly hold a hearing to determine whether the proposed transmission project is (1) necessary to facilitate the RPS

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[9] CalWEA Comments, March 11, 2003, p. 7.

program goals and (2) provides benefits to the transmission network. In making these determinations, CalWEA urges the Commission to construe § 399.25 as requiring "only that the transmission project will enhance significantly the likelihood that renewable projects will be developed."[10] Under CalWEA's proposal, the Commission would require commencement of the CPCN application immediately after issuing a final decision that makes these determinations. As a corollary proposal, CalWEA recommends that: "if the Commission identifies a transmission project in its renewables transmission plan, then there should be a presumption that such a transmission project is needed to facilitate RPS Program goals."[11] In addition, CalWEA proposes that the costs of all transmission studies be credited to the renewable developers in proportion to their shares of the network facilities ultimately built as a result of the studies.

TURN expresses concern that sequentially phasing all § 399.25 findings after an RPS auction could jeopardize the feasibility of cost-effective renewable generation projects. TURN recommends that the Commission consider a more expansive definition of this test that would allow advanced proceedings to commence under § 399.25 for transmission projects that could serve large amounts of cost-effective renewable generation. TURN also echoes CalWEA's concern that the proposed framework limits the application of § 399.25 to contracts signed by the IOUs.

In their reply comments, the utilities argue that CalWEA's proposed approach favors generators to the detriment of ratepayers. In particular, SCE

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[10] *Ibid*, p. 5.

[11] *Ibid.*, p. 5.

criticizes CalWEA's approach as promoting a quick project approval process, regardless of whether it produces the correct outcome of "least cost, best fit," and placing unnecessary risks on the ratepayers.

SDG&E contends that CalWEA misunderstands the complexities of transmission planning, permitting and licensing. As a consequence, SDG&E argues that CalWEA's proposal to initiate CPCNs and PTCs for all potential transmission projects before winning bidders are determined would have the undesired effect of slowing the transmission siting process and wasting millions of ratepayer dollars.

PG&E argues that CalWEA does not acknowledge the fact that project developers already know what transmission facilities they have to fund under FERC interconnection policies. Therefore, PG&E contends that waiting for the results of the RPS bidding process will not create uncertainty and instability with respect to renewable resource development.

4. Discussion

By way of definition, we refer to transmission facilities needed to bring power from the plant to the first point of interconnection with the existing transmission grid as "gen-ties." We refer to facilities needed to upgrade the existing transmission grid to ensure reliable electric service and full delivery of a generator's output with the added generation as "network" or "system" upgrades.[12] Under current FERC policy, new generators absorb gen-tie costs as part of the cost of producing power. With respect to network upgrade costs,

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[12] We are using the term "network" or "system" upgrade to encompass what the California Independent System Operator terms "Reliability Upgrades" and "Delivery Upgrades" in its June 30, 2003 comments on the draft decision.

current FERC policy requires a new generator to fund network upgrades for which the new generator is the "but for" causation. However, the transmission owner (e.g., the IOUs) must credit back those costs, with interest, in monthly payments amortized over a number of years beginning when the new generation is available to the grid. Thus, the renewable developer knows that it currently must finance the needed transmission network upgrades, but will receive that money back with interest once it comes on-line.

The language of § 399.25 does not modify the developer's cost responsibility for either gen-ties or network upgrades. The former continues to be funded by the new generator and the latter by ratepayers, under current FERC policies.[13] The difference is that § 399.25 (b) provides the *possibility* of "rolled-in ratemaking" for network upgrade costs, which we define to mean that the developer would not have to fund network upgrades upfront and await recovery of those costs over time. Instead, ratepayers would fund those costs — either in transmission rates (authorized by FERC) or in retail rates authorized by this Commission. More specifically, the utilities would finance these transmission projects as part of rate base, with the associated costs recovered in rates.[14] Under this scenario, ratepayers assume the financial risk of the generation projects actually coming on line.

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13 Nor does the statute alter the responsibility of project developers to fund transmission cost studies, pursuant to the tariffs of the California Independent System Operator. We affirm the ruling of the ALJ in I.00-11-001, dated March 27, 2003, that denies a request by Vulcan Power Company to consider ratepayer funding for transmission conceptual (including cost) studies that are being undertaken by the utilities in response to developer interest.

14 Assuming that those costs were prudently incurred, per § 399.25(b)(4).

Before the Commission can support rolled-in ratemaking for renewable transmission projects in the transmission rates under FERC's jurisdiction or consider including them in Commission-approved retail rates, it must make certain findings pursuant to § 399.25(b)(1). Specifically, the Commission must find that the transmission facilities: (1) provide benefit to the transmission network and (2) are necessary to facilitate the achievement of the RPS program. These findings must be supported by an evidentiary record.

As discussed above, the debate over the ALJs' proposed framework for implementing § 399.25 centers around when and how the Commission should make these findings. On the one hand, CalWEA argues that the findings can and should be reached before the RPS solicitation process is completed, based on transmission studies and other evidence related to the proposed facilities that are available prior to the CPCN or PTC filings. TURN generally supports CalWEA's position for projects in certain geographic regions that are rich in renewable resource potential, yet constrained by transmission limitations. The utilities, on the other hand, argue that ratepayers' interests are not served by commencing with CPCN and PTC applications for potential transmission projects before winning bidders are determined.

We agree with the utilities that it would be inefficient and counter-productive for them to file CPCN and PTC applications for all potential transmission projects before winning bidders are determined. CalWEA's proposed approach would require just that--irrespective of how well the proposed transmission project is defined in terms of size, location, costs and other factors, or how large the potential is for renewable generation projects in a particular region to win the RPS bid. As SCE points out, it can cost ratepayers between $1.5 and $3 million for each CPCN application filed by the utility for a transmission system upgrade.[15]

CalWEA's corollary proposal is also problematic. The renewables transmission study that the Commission will submit to the Legislature on December 1, 2003 is, by statute, dependent upon the renewables resource assessment that the CEC hands off to the Commission. It is intended to "provide for the rational, orderly, cost-effective expansion of transmission facilities that <u>may be necessary</u> to facilitate the development of renewable electricity generation facilities" identified by the CEC in its assessment.[16]

The CEC outlined the scope and schedule for its renewable resource assessment in a letter dated January 29, 2003.[17] It plans to provide the Commission with an assessment by July 1, 2003 that identifies renewable megawatt additions by technology type (geothermal, solar, wind, etc.), and by general geographic area (e.g., Tehachapi, Salton Sea, San Gorgonio, Altamont Pass and Siskiyou County).[18] We also note that the statutory deadline for submission of the transmission study may predate the completion of our RPS bid solicitation. Accordingly, the scope of work for our renewables transmission study will encompass the following:

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15 SCE Reply Comments, March 17, 2003, p. 6.

16 § 383.6, emphasis added.

17 See Attachment 1, ALJ's Ruling on Development of Renewables Transmission Plan Pursuant to Senate Bill 1038, February 26, 2003 in I.00-11-001.

18 *Ibid*.

> "The purpose of this study is to present information to the Legislature about transmission upgrades that may be needed to interconnect and deliver new potential renewable generation, depending upon the results of the renewable power procurement process. …. The study will focus on identifying the scope and estimated costs of potential new transmission facilities, potential new line routes, new substation locations and, as appropriate, critical issues that might affect the development of those facilities. It is recognized that the scope and cost estimates of any potential new transmission facilities or upgrades identified in this process can only be as detailed as the resource development information provided by the CEC and the resource developers, and will be further dependent upon the order and timing of actual interconnections sought by the developers of renewable energy projects."[19]

Given these circumstances, we do not concur with CalWEA that any transmission project identified under the study should be presumed "needed" for the purposes intended under § 399.25—i.e., for certification and rolled-in ratemaking. Such a presumption would commit ratepayer funds for potentially hundreds of millions of dollars based on a general assessment of renewable resource potential, and without the benefit of knowing which projects would actually win the bid and where they would locate their generation facilities.

Moreover, CalWEA's interpretation of § 399.25 violates a basic rule of statutory construction. CalWEA asserts that "necessary to facilitate" is intended to mean that we "find only that the transmission project will enhance

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[19] ALJ's Ruling Clarifying Purpose of Transmission Cost Studies, Addressing Scope of Work For Renewables Transmission Study, and Related Issues, March 27, 2003 in I.00-11-001, Attachment 1, p. 1.

significantly the likelihood that renewable projects will be developed."[20] However, this interpretation would render the word "necessary" completely meaningless, in conflict with the rule of construction that statutes are to be interpreted according to their plain language, so that none of the language of the statute becomes surplusage.[21]

In our opinion, the Joint Ruling's interpretation of the statutory language is the only logical one:

> "If the facility is an integral part of a renewables project approved pursuant to the RPS procurement process (i.e., a winning renewables bid), we believe that creates a prima facie finding that the transmission project will facilitate the achievement of the renewable power goals set forth in Article 16 of SB 1078. However, the statute specifically states that the transmission project must be "necessary" to the achievement of those goals. In our view, this requires a further level of scrutiny to ensure that the proposed project is the appropriate option among possible alternatives. Generally, it is only during review of the utility's CPCN or PTC application that the Commission has an evidentiary record with which to consider alternate routes, locations or configurations. For both type of applications, GO 131-D requires the utility to present reasons for selection of power line route or substation location, include comparisons with alternate routes or locations and discuss the advantages and disadvantages of each.[22] Therefore,

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[20] CalWEA Comments, March 11, 2003, p. 5.

[21] *People vs. Cruz* (1996) 13 Cal. 4th 764, 782 ("that rule [of statutory construction] directs courts to avoid interpreting statutory language in a manner that would render some part of the statute surplusage.")

[22] See GO 131-D Sections IX.A.1.e. and IX.B.1.c. In addition, the CEQA may require the Commission to consider project alternatives in the CPCN or PTC application process.

> as a general rule, we envision that this finding is most appropriately made by the Commission in response to the utility's application for a CPCN or PTC for the transmission project."[23]

Having said that, a set of transmission system upgrades related to renewable resource development may emerge from our renewables transmission study as being likely to be required over the next few years, based on the geographic location and magnitude of resource development projected by the CEC. The renewables transmission study will identify such upgrades and also describe what affirmative steps should be taken to plan for them.[24] Such steps could include assessments of major environmental issues, land acquisition needs (and preliminary costs), among others. We will consider the report findings on these issues and direct the utilities to take such steps, as appropriate.

We are also proceeding with evidentiary hearings on the Tehachapi Transmission Project in advance of the RPS bid solicitation for the reasons described in the Joint Ruling.[25] In its comments on that ruling, SCE argues that evidentiary hearings are unlikely to yield useful findings based on the conceptual studies completed to date. We note that SCE makes these same

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[23] Joint Ruling, pp. 4-5.

[24] ALJ's Ruling Clarifying Purpose of Transmission Cost Studies, Addressing Scope of Work For Renewables Transmission Study, and Related Issues, March 27, 2003 in I.00-11-001, Attachment 1, p. 1: "The report will also delineate a set of system upgrades related to renewable resource development that appear most likely to be required over the next five years, based on the geographic location and magnitude of resource development projected by the CEC, and describe what affirmative steps should be taken now to plan for them."

[25] See Section 2.

arguments in its prepared testimony. In contrast, the wind developers argue in their testimony that the results of the conceptual studies and other factual evidence support Commission findings related to § 399.25. We will address these issues after hearing all the evidence in Phase 6 of our transmission investigation.

With minor clarifications, we are adopting the general framework proposed in Joint Ruling. First, we clarify that the framework applies to network transmission upgrades as defined above—and not to gen-ties. As discussed below, § 399.25 applies to applications for transmission line construction/upgrades subject to this Commission's siting jurisdiction. Gen-ties are considered part of the cost of the generation project and are sited by the CEC.[26]

Second, as PG&E suggests, we clarify the purpose of the evaluation of "necessity" during the CPCN or PTC application process. The relevant question for that process is whether the project proposed to accommodate the interconnection of the winning renewable bidder is "necessary" for that purpose. The evaluation would not reconsider the selection of the winning generation project.

With these clarifications incorporated, we restate here the substance of the Joint Ruling:

All of the provisions of § 399.25 apply only to applications before the Commission that meet certain criteria. Accordingly, our primary task is to define

[26] The CEC sites thermal generation projects of 50 megawatts or above. Smaller and non-thermal projects are typically sited under local authority.

what applications are subject to the requirements of Section 399.25. The relevant portion of subdivision (a) reads:

> [A]n application of an electrical corporation for a certificate authorizing the construction of new transmission facilities shall be deemed to be necessary to the provision of electric service for purposes of any determination made under Section 1003 if the commission finds that the new facility is necessary to facilitate achievement of the renewable power goals established in Article 16 (commencing with Section 399.11).

First, there must be an application before the Commission from an electrical corporation for a certificate authorizing the construction of new transmission facilities. If there is no application before the Commission, § 399.25 does not apply. We note that the statute's language refers to § 1003, which addresses the informational requirements for projects that are subject to Commission review. This confirms our interpretation that § 399.25 applies only to applications for transmission line construction/upgrades subject to this Commission's siting jurisdiction. Moreover, in referring to the general informational requirements of § 1003, the statute does not specifically distinguish between applications for a Certificate of Public Convenience and Necessity (CPCN) and applications for a PTC, as we have defined these terms in GO 131-D. We conclude that § 399.25 applies to both CPCN and PTC applications before this Commission and, by definition, does not apply to gen-ties.

Second, § 399.25(a) contains a prerequisite that the Commission find that the new transmission facility "is necessary" to facilitate achievement of the applicable renewable power goals. If the network upgrade is an integral part of a renewables project approved pursuant to the RPS procurement process (i.e., a winning renewables bid), we believe that creates a prima facie finding that the transmission project will facilitate achievement of the renewable power goals set forth in Article 16 of SB 1078.[27] However, the statute specifically states that the transmission project must be "necessary" to the achievement of those goals. In our view, this requires a further level of scrutiny to ensure that the proposed project is the appropriate option among possible alternatives.

Generally, it is only during review of the utility's CPCN or PTC application that the Commission has an evidentiary record with which to consider alternate routes, locations or configurations. For both types of applications, GO 131-D requires the utility to present reasons for selection of power line route or substation location, include comparisons with alternate routes or locations and discuss the advantages and disadvantages of each.[28] Therefore, as a general rule, we envision that the Commission will make a finding of "necessity" in response to the utility's application for a CPCN or PTC for the transmission project. The evaluation would not reconsider the selection of the winning generation project.

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[27] In its comments on the ALJs' proposed framework, PG&E states its expectation that the bids by renewable energy generators will not include a detailed description of any transmission facilities that may be needed to bring such energy to the transmission grid. (PG&E Comments, March 11, 2003, p. 2.) Regardless of what specific information may be contained in the bid, the statute requires the utility to evaluate the indirect costs of transmission (i.e., network upgrades) associated with each renewable project in reaching its "least cost, best fit" selections for Commission consideration. It is these network upgrades that we are referring to (as "integral" to the renewables project) in our discussion of a prima facie finding that such projects will facilitate the RPS goals.

[28] See GO 131-D Sections IX.A.1.e. and IX.B.1.c. In addition, the California Environmental Quality Act (CEQA) may require the Commission to consider project alternatives in the CPCN or PTC application process.

A finding that the transmission project is "necessary" to facilitate the achievement of the renewables portfolio goals is reiterated in § 399.25(b)(1), which states in relevant part:

> (b) With respect to a transmission facility described in subdivision (a), the commission shall take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission are fully reflected in any retail rates established by the commission. These actions shall include, but are not limited to:
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> (1) Making findings, where supported by an evidentiary record, that those transmission facilities provide benefit to the transmission network and are necessary to facilitate the achievement of the renewables portfolio standard established in Article 16 (commencing with Section 399.11).

However, this section of the statute—which relates to ratemaking treatment, rather than project need—includes an additional requirement: the Commission must also find that the transmission facilities "provide benefit to the transmission network." Here again, we believe that the CPCN or PTC proceeding for the project is generally the appropriate forum in which to investigate and evaluate network benefits. To bifurcate this issue from the evaluation of project need and project alternatives that otherwise takes place during the CPCN and PTC review would, in our estimation, be confusing to public participants and could strain both the Commission's and interested parties' limited resources on transmission issues. Nonetheless, we recognize that evaluating network benefits in each separate CPCN or PTC proceeding could promote some inconsistencies in evaluation methods across proceedings. To address this, we direct that Energy Division monitor the methods being utilized across the various proceedings and develop recommendations to enhance the use of sound, consistent methods, as needed.

We recognize FERC's jurisdiction in the area of electric transmission, and our implementation of the statute does not attempt to modify or interfere with FERC's authority. However, we disagree with PG&E's contention that the authority granted to the Commission by § 399.25(b)(1), namely, to make findings that specific transmission facilities provide benefit to the transmission network, interferes with FERC's jurisdiction over transmission ratemaking such that it would be preempted by federal law. As discussed in Section 5 below, we rely on an interpretation of the statute that conforms with the basic rules of statutory construction.

In sum, as a general framework for incorporating the requirements of § 399.25 into the planning process, we adopt the following:

- The provisions of § 399.25 apply to network transmission facilities that come before the Commission in the form of a CPCN or PTC application. "Network" transmission facilities are defined as those that are needed to ensure reliable electric service with the addition of generation. The provisions of § 399.25 do not apply to transmission facilities needed to bring power from the plant to the first point of interconnection with the existing transmission grid.

- The procurement proceeding will develop the rules and procedures for the RPS planning process and RPS renewables bidding program. If the transmission facility is an integral part of a renewables project approved pursuant to the RPS process, (i.e., a winning renewables bid), that creates a prima facie finding that the network upgrade will facilitate achievement of the renewable power goals set forth in Article 16 of SB 1078.

- The Commission will make § 399.25(a) and § 399.25(b)(1) findings on whether a proposed transmission project is "necessary" to facilitate achievement of renewable power goals in the applicable CPCN or PTC proceeding, based on the results of the RPS procurement process and GO 131-D considerations of alternatives to the proposed project. The evaluation will not, however, reconsider the selection of the winning generation project.

- In the applicable CPCN or PTC proceeding, the Commission will make § 399.25(b)(1) findings regarding whether the transmission project undertaken to ensure reliable electric service with the addition of generation will also provide benefits to the transmission network.

- The Commission will continue to perform the appropriate CEQA review of CPCN and PTC applications, which may include consideration of project alternatives.

CalWEA and TURN correctly point out that today's adopted framework focuses on the results of the IOUs' procurement process. We believe it is premature to consider the applicability of § 399.25 to the procurement practices of other RPS-obligated retail sellers (electric service providers and community choice aggregators), until the rules for these sellers are developed in coming phases of RPS implementation. We will ensure, however, that treatment is consistent and equitable across RPS-obligated entities.

Finally, we note that IEP's concerns regarding the use of transmission cost proxies for the bid ranking process have been considered in D.03-06-071, and those costs will be developed in a further phase of this proceeding.

5. Comments on Draft Decision

The draft decision of ALJ Gottstein and ALJ TerKeurst was mailed to the parties in this proceeding and Rulemaking 01-10-024 in accordance with Section 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on June 30, 2003 by PG&E, SCE, California Independent

System Operator (ISO), TURN and Center for Energy Efficiency and Renewable Technologies (CEERT).[29] Reply comments were filed on July 7, 2003 by SCE.

In response to comments, we have made a number of language modifications to clarify the definition of terms and our intent in adopting procedures for implementing § 399.25 requirements. However, we have made no substantive modifications to the disposition of issues in the draft decision. Below, we discuss the major objections raised in comments.

PG&E and SCE take issue with the language in the draft decision that refers to "rolled in ratemaking." In part, their objections are a matter of semantics. In this decision, we use the term "rolled in ratemaking" to refer to a ratemaking process whereby developers would *not* have to fund network upgrades upfront and await recovery of those costs. Apparently, SCE and PG&E use the term "rolled in ratemaking" somewhat differently in FERC proceedings, i.e., in a manner that makes rolled in ratemaking and upfront funding by the generation developer not mutually exclusive. We clarify that our use and definition of the term is specific to today's discussion. We also clarify that the corollary to not having developers fund network upgrades upfront is a scenario where the utilities finance the transmission project and request cost recovery through rates.

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[29] Geo-Energy Partners-1983 LTD. (Geo-Energy) filed opening comments three days after the due date, and a motion to accept late-filed opening comments seven days after the due date. In its motion, Geo-Energy contends that its comments were necessarily delayed until the information exchange between Geo-Energy and SCE regarding the Conceptual Study North of Inyokern had been completed. We do not find this delay justified, and deny Geo-Energy's motion.

PG&E argues that the draft decision errs in "assuming that section 399.25 somehow 'provides the possibility' that renewables developers might not have to fund network upgrades upfront and await recovery of those costs over time."[30] In PG&E's view, the draft decision goes far beyond the requirements of § 399.25(b)(1) in implying that the Commission's network benefits findings could "then be used to circumvent federal requirements for the funding of network upgrades."[31] PG&E argues that this would interfere with FERC's jurisdiction over transmission ratemaking, and as such would be preempted by federal law. SCE makes similar arguments in its comments.

We believe that the language of § 399.25(b)(1) does present the possibility of a ratemaking treatment for transmission facilities associated with renewables development that is different from the status quo, provided that certain findings are made based on an evidentiary record. To assume otherwise would ignore the Legislative requirement in § 399.25(b)(4) that we allow recovery of the *utilities'* costs of these transmission facilities in our *retail rates*, if FERC does not approve full recovery in the transmission rates under its jurisdiction and we find the costs prudently incurred. This provision only makes sense under a scenario where the utility finances the construction of the transmission facilities, applies to FERC for ratepayer cost recovery, and FERC does not authorize full recovery through the transmission rates under its jurisdiction. The language would simply be superfluous under PG&E's interpretation that this possibility does not exist and is automatically preempted by federal law. As the ISO points out in its

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30 PG&E Comments, p. 2.

31 *Ibid*., p. 3,

comments, it may take considerable effort to harmonize implementation of § 399.25 with FERC requirements for interconnection (which are the subject of ongoing proceedings before FERC). PG&E clearly does not support any changes to FERC policy, as evidenced by the long discourse concerning this issue in its comments. Nonetheless, PG&E's interpretation of the statute violates the basic rules of statutory construction, whereas the ALJs' interpretation does not.

PG&E and SCE seem to read § 399.25(b)(4) as follows: If a renewable generator does not receive from FERC its desired species of rolled-in ratemaking, then the renewable generator may (subject to certain findings) obtain that desired species of rolled-in ratemaking from this Commission, not withstanding what FERC adopts. If and when the above contingencies occur, there may be a preemption issue, but we have not yet come to that pass. There is still ample opportunity to harmonize § 399.25 with FERC interconnection policy, both at this Commission and at the FERC.

Moreover, PG&E and SCE are simply incorrect in their assertion that the type of "rolled in" ratemaking for the transmission projects envisioned by § 399.25 violates FERC policy such that the doctrine of federal preemption is invoked. In this regard, we note that nowhere in their comments do either PG&E or SCE cite to a specific federal law or FERC rule that articulates this FERC policy as a legally binding requirement. Nor could they do so if they tried, because the FERC policy in question, which requires the developers of new generation to front transmission system network upgrade costs and to recover these costs in credits after the new upgrade is available to the grid, is precisely that—a policy; it is neither a law nor a rule.

The various FERC decisions cited in PG&E's comments reflect various instances in which that policy was implemented. However, the implementation by a federal agency such as FERC of a particular policy preference in various individual cases does not amount to the establishment of federal "law" that supports the application of the doctrine of federal preemption, and the states must be presumed to be able to implement their own alternative policy preferences in such matters unless federal law expressly or impliedly mandates otherwise. In this regard, we note that there are cases in which FERC policy actually supports the use of "rolled in" rate treatment (as we define the term in this decision) for transmission system network upgrades. Such upgrades typically provide system-wide benefits, and FERC has found that their cost should be borne by all users of the system. (See, e.g., *San Diego Gas & Electric Company*, 98 FERC ¶ 61,332 (2002). In sum, we find no basis for PG&E and SCE's assertions regarding federal preemption.

TURN and CEERT express concerns that the procedures adopted today are at odds with D.03-06-071, which we recently issued in Rulemaking (R.) 01-10-024 to establish our Renewable Portfolio Standard (RPS) program. We believe that these two decisions are indeed compatible, but make certain clarifications to the draft decision to ensure a clearer understanding of our intent.

We intend the procedures outlined above to represent our *general* approach for sequencing the RPS bidding process with the utilities' applications for construction permits, our associated environmental review, and determinations regarding § 399.25 ratemaking issues. In general, we believe that the public interest is best served by waiting until we know which projects actually win the bid and where they will locate, before making the determinations on project necessity and network benefits required under § 399.25. In the draft decision, the assigned ALJs describe at length the reasons for adopting this approach as the general rule, and we affirm that determination as being both consistent with the specific language of § 399.25 as well as the overall goals for our RPS program.

With respect to specific comments, we disagree with CEERT's characterization of these procedures as "putting at risk" or "likely assuring non-compliance" with the utilities' annual renewable procurement targets.[32] More specifically, CEERT contends that compliance with the RPS procurement process set forth in D.03-06-071 requires that the Commission completes its need findings and review of CPCN applications for all winning bidders in the same year as, and preferably in advance of, each annual RPS solicitation. However, D.03-06-071 does not establish this expectation. Nor do we believe that such a timetable is reasonable for all winning bidders, particularly with respect to projects that require network transmission upgrades. In fact, we provided for a longer timetable by adopting a flexible compliance mechanism in D.03-06-071. Under that mechanism, a project (or group of projects) requiring new network facilities that take up to four years to construct is still eligible to win the "least-cost, best fit" solicitation for any given year.[33] Hence, the general procedures for implementing § 399.25 are not incompatible with the annual procurement process adopted in D.03-06-071, as CEERT suggests. Nonetheless, as we recognized in D.03-06-071, "least cost" will tend to favor generation with existing transmission facilities available.[34] It is not a flaw in our procedures, but rather an

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[32] CEERT Comments, June 30, 2003, p. 4.

[33] D.03-06-071, pp. 49-50.

[34] *Ibid.* p.36.

adherence to least-cost principles that may push renewable projects requiring such new transmission facilities further out into the future.

CEERT also objects to the proposed procedures on the basis that a winning bid cannot be identified without "findings first having been made as to how upgrade costs or network benefits will be allocated to a particular project."[35] We do not intend to identify a winning bid without conducting an assessment of the transmission costs associated with each renewable project. As described in D.03-06-071, we will be developing a "workable approximation of the costs to the transmission system imposed by each new renewable generator" in this proceeding, as well as addressing the issue of how the costs of new network facilities should be allocated among bidders within a common resource area, in a separate phase of this proceeding.[36] Bidders may also offer a description of the network benefits associated with their project, which will be reviewed by the utilities and Procurement Review Group during the bid selection process.[37] Hence, we will not proceed to select "least-cost, best fit" winning bidders without a reasonable assessment of the transmission costs associated with their projects and, as applicable, the network benefits.

What CEERT really seems to be objecting to (as did CalWEA in its earlier comments), is that developers may face some uncertainty as they prepare their bids with respect to how the FERC cost allocation and ratemaking issues will play out, including what our § 399.25 findings will be with respect to project

[35] CEERT comments, p. 4.

[36] D.03-06-071, p. 36.

[37] *Ibid*. p. 37.

necessity and network benefits. The statute clearly requires that such findings be supported by an evidentiary record. Workable approximations of new transmission facilities and the bidders' characterizations of network benefits considered in the ranking process do not represent record evidence. Moreover, as discussed in the draft decision, it is generally only during the review of the utility's CPCN or PTC application that we have an evidentiary record with which to consider alternate routes, locations or configurations sufficient for the finding of "necessity" required for the ratemaking issues under § 399.25(b)(1).[38] As a general rule, we concur with the assigned ALJs that conducting evidentiary hearings on network benefits in advance of the RPS bid soliciation or expecting the utilities to expedite CPCN or PTC applications for prospective bidders is unworkable. As indicated in D.03-06-071, we intend to proceed with the RPS solicitation assuming the continuation of current FERC interconnection and cost allocation practices for new generators, and developers should do the same.[39]

At the same time, however, the procedures described in the draft decision were not intended to preclude this Commission from ever holding evidentiary hearings on § 399.25 issues (e.g., network benefits) for potential renewable transmission projects in advance of a RPS bid solicitation or filing of a CPCN or PTC. Nor do the procedures preclude us from directing the utilities to take affirmative steps to plan for transmission system upgrades that may emerge

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[38] We note that the Minnesota Public Utilities Commission (PUC) decision referenced in CEERT's comments was in response to a CPCN that provided "record evidence" to establish that the most reasonable and prudent transmission configuration (among several) for meeting the need for new network facilities to accommodate wind development. (See CEERT Comments, Attachment, p. 6.)

[39] *Ibid, footnote 25.*

from our renewables transmission study. As a case in point, we have completed evidentiary hearings on the Tehachapi Transmission Project in order to explore whether findings related to § 399.25 can be made at this time. If the evidentiary record supports such findings, we will make them. However, they may need to be of a preliminary nature if we find that the project is not sufficiently defined at this juncture.

In sum, we affirm the general procedures for implementing § 399.25 set forth in the draft decision, with the clarifications discussed above. As TURN suggests, we also clarify that the calculation of transmission costs for the bid ranking process will be developed in this proceeding, consistent with our direction in D.03-06-071. Finally, we expand our definition of "network" or "system" upgrades to encompass what the ISO terms "Delivery Upgrades" in its comments.

6. Assignment of Proceeding

Loretta M. Lynch is the assigned Commissioner and Meg Gottstein and Charlotte F. TerKeurst are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. The language of § 399.25 does not modify the generation project developer's cost responsibility for either gen-ties or transmission network upgrades under current FERC policies. Generators pay for the former. Ratepayers pay for the latter; however, the generator pays the cost upfront and is credited back those costs over a number of years (with interest) once the generation project comes on line.

2. AB 1078 (§ 399.25) provides for the possibility of rolled-in ratemaking for network upgrade costs, as we define those terms in today's decision, should the Commission make certain findings based on an evidentiary record.

3. PG&E's interpretation of AB 1078 would render § 399.25(b)(4) superfluous, whereas the ALJs' interpretation is consistent with the language of the statute in its entirety.

4. Under rolled-in ratemaking, the project developer would not have to finance network transmission upgrades upfront and await recovery of those costs over time. Instead, utilities would finance the upgrades as part of rate base and seek cost recovery through rates. Under this scenario, assuming that the costs were prudently incurred, ratepayers would assume the risk that the generator may not come on line.

5. Under CalWEA's proposed framework, the Commission would make § 399.25 findings regarding project need and rolled-in ratemaking and utilities would file CPCN and PTC applications for all potential transmission projects related to renewable generation before winning bidders are determined under the RPS procurement process. As discussed in this decision, this approach would be inefficient and impose unreasonable costs on ratepayers.

6. CalWEA's interpretation of § 399.25 would render the word "necessary" completely meaningless. This interpretation conflicts with the rule of construction that statutes are to be interpreted according to their plain language, so that none of the language of the statute becomes surplusage.

7. The Joint Ruling recognizes that the provisions of § 399.25 apply to applications for transmission line construction/upgrades subject to the Commission's siting jurisdiction.

8. The Joint Ruling does not explicitly acknowledge that the provisions of § 399.25 do not apply to gen-ties, since they are not subject to the Commission's siting jurisdiction.

9. The Joint Ruling's interpretation of § 399.25 recognizes that the statute specifically states that a transmission project must be "necessary" to the achievement of the RPS goals, and establishes a further level of scrutiny to ensure that the proposed transmission project is the appropriate option among possible alternatives.

10. In general, it is only during the CPCN or PTC application that the Commission develops an evidentiary record that allows it to consider alternate routes, locations or configurations for a proposed transmission upgrade.

11. The Joint Ruling acknowledges that bifurcating the issue of network benefits from the evaluation of project need and project alternatives would generally be confusing to public participants and could strain both the Commission's and interested parties' limited resources on transmission issues.

12. Inconsistencies in the methods used to assess the network benefits across CPCN and PTC proceedings could develop under the ALJs' proposed framework, unless Energy Division monitors these developments and intercedes with recommendations, as appropriate.

13. The ALJs' proposed framework focuses on the results of the IOUs' procurement process, and does not address the applicability of § 399.25 to the procurement practices of other RPS-obligated retail sellers. However, it is premature to address this issue until the rules for these sellers are more clearly defined in coming phases of RPS implementation.

14. Determining need for the purposes of § 399.25 based on the SB 1038 Renewables Transmission Study would commit ratepayer funds for potentially

hundreds of millions of dollars based on a general assessment of renewable resource potential, and without the benefit of knowing which projects would actually win the bid and where they would locate their generation facilities. However, a set of transmission system upgrades related to renewable resource development may emerge from the study as being likely to be required over the next few years, based on the geographic location and magnitude of resource development projected by the CEC.

15. It is premature to consider whether or not the evidentiary record on the Tehachapi Transmission Project, scheduled for evidentiary hearings in early June, 2003, will support Commission findings regarding § 399.25 matters.

16. The general procedures for implementing § 399.25 adopted in today's decision are compatible with the annual procurement process adopted in D.03-06-071.

17. Timely comments on the draft decision in this matter did not depend upon the completion of information exchange between Geo-Energy and SCE concerning the Conceptual Study North of Inyokern.

Conclusions of Law

1. The ALJs' interpretation of § 399.25 conforms with the basic rules of statutory construction.

2. With the clarifications discussed in this decision, the framework for implementing § 399.25 proposed in the Joint Ruling should be adopted.

3. The authority granted to the Commission by § 399.25(b)(1) to make findings that specific transmission facilities provide benefit to the transmission network does not interfere with the FERC's jurisdiction over transmission ratemaking such that it would be preempted by federal law.

4. In order to proceed as expeditiously as possible with the implementation of § 399.25, this decision should be effective today.

5. Geo-Energy's motion to accept late-filed comments on the draft decision should be denied.

INTERIM ORDER

IT IS ORDERED that:

1. As a general framework for incorporating the requirements of Public Utilities Code Section 399.25 into the Renewables Standard Portfolio (RPS) planning process, we adopt the following:

    - The provisions of § 399.25 apply to network transmission facilities that come before the Commission in the form of a Certificate of Public Convenience and Necessity (CPCN) or Permit to Construct (PTC) application. "Network" transmission facilities are defined as those that are needed to ensure reliable electric service and full delivery of a generator's output with the addition of generation. The provisions of § 399.25 do not apply to transmission facilities needed to bring power from the plant to the first point of interconnection with the existing transmission grid.

    - The procurement proceeding will develop the rules and procedures for the RPS planning process and RPS renewables bidding program. If the transmission facility is an integral part of a renewables project approved pursuant to the RPS process, (i.e., a winning renewables bid), that creates a prima facie finding that the network upgrade will facilitate achievement of the renewable power goals set forth in Article 16 of Senate Bill 1078.

    - The Commission will make § 399.25(a) and § 399.25(b)(1) findings on whether a proposed transmission project is "necessary" to facilitate achievement of renewable power goals in the applicable CPCN or PTC proceeding, based on the results of the RPS procurement process and General Order (GO) 131-D considerations of alternatives to the proposed project. The evaluation will not, however, reconsider the selection of the winning generation project.

- In the applicable CPCN or PTC proceeding, the Commission will make § 399.25(b)(1) findings regarding whether the transmission project undertaken to ensure reliable electric service with the addition of generation will also provide benefits to the transmission network.

- The Commission will continue to perform the appropriate review of CPCN and PTC applications under the California Environmental Quality Act, which may include consideration of project alternatives.

2. As discussed in this decision, there may be circumstances that warrant addressing § 399.25 issues for transmission projects related to renewables development prior to the completion of the RPS bid solicitation or before the CPCN or PTC filings are made. The assigned Administrative Law Judge, in consultation with the Assigned Commissioner, may identify such circumstances in the scoping and scheduling of issues in this proceeding.

3. As discussed in this decision, Energy Division shall monitor the methods being utilized across the various CPCN and PTC proceedings to assess network benefits, and develop recommendations to enhance the use of sound, consistent methods, as needed. Energy Division shall present any recommendations on this issue in the form of a report, to be filed and served on all the parties to this proceeding and Rulemaking 01-10-024. In developing its recommendations, Energy Division shall obtain public input through workshops or written comments. The Assigned Commissioner or assigned Administrative Law Judge in this proceeding shall establish a procedural schedule for addressing Energy Division recommendations.

4. The Motion of Geo-Energy Partners-1983 LTD. to Late File Opening Comments on the Draft Interim Opinion, dated July 7, 2003, is denied.

This order is effective today.

Dated ____________________________, at San Francisco, California.

ATTACHMENT 1

List of Acronyms and Abbreviations

AB – Assembly Bill

ALJ – Administrative Law Judge

CalWEA – California Wind Energy Association

CEC – California Energy Commission

CEQA – California Environmental Quality Act

CPCN – Certificate of Public Convenience and Necessity

FERC – Federal Energy Regulatory Commission

GO – General Order

I. - Investigation

IEP – Independent Energy Producers

IOU – Investor-Owned Utility

PG&E – Pacific Gas and Electric Company

PTC – Permit to Construct

R. - Rulemaking

RPS – Renewable Portfolio Standard

SB – Senate Bill

SDG&E – San Diego Gas and Electric Company

SCE – Southern California Edison Company

TURN – The Utility Reform Network

(END OF ATTACHMENT 1)